

NOT TO BE PUBLISHED

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

COURT OF APPEAL, FOURTH DISTRICT

DIVISION TWO

STATE OF CALIFORNIA

In re CAMI M. et al., Persons Coming Under
the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT OF
PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

DALE M.,

Defendant and Appellant.

E029221

(Super.Ct.No. J100052)

OPINION

APPEAL from the Superior Court of Riverside County. H. Dennis Myers, Judge.

Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and
Appellant.

William C. Katzenstein, County Counsel, and Julie A. Koons and Robert Pepper,
Deputy County Counsel, for Plaintiff and Respondent.

John L. Dodd, under appointment by the Court of Appeal, and Karen Dodd for
Minors.

INTRODUCTION

In this juvenile dependency proceeding involving two minors, Dale M. (Dale) and Cami M. (Cami), the trial court awarded custody of Dale to his biological father (father) and custody of Cami to her biological mother (mother).

The father of both children contends that the trial court (which awarded him custody of Dale) abused its discretion by failing to also award him custody of Cami. We reject the father's contention and affirm.

PROCEDURAL HISTORY

The Riverside County Department of Public Social Services (DPSS) filed a petition initiating this dependency case in October 2000. The minors, Dale (born in 1988) and his sister Cami (born in 1990), were alleged to be within the jurisdiction of the juvenile court because, while in primary custody of their mother, their stepfather sexually abused Cami and both the mother and stepfather physically abused both children. (Welf. & Inst. Code, § 300, subds. (a), (b), (d), & (j).)¹

At the jurisdictional hearing, the juvenile court made the following finding based on clear and convincing evidence: "While in the care and custody of the mother and [stepfather], Art [A.], the children were inappropriately disciplined with the use of a wooden paddle [and] such actions place the children at risk of suffering serious physical harm." (§ 300, subd. (b).) The trial court concluded that the stepfather did not inappropriately touch

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Cami, finding that: “While in the care and custody of the mother, the child Cami initially disclosed but later recanted that she was inappropriately touched by her stepfather.” (§ 300, subd. (b).)

The trial court awarded custody of Dale to his father. (§§ 300, subd. (b), 361.2, subds. (a) & (b)(2).) The trial court adjudged Cami a dependent child of the juvenile court and Cami’s care, custody, and control was placed with the mother subject to DPSS supervision. This was done on the condition that Cami would not be left alone at any time with the stepfather.

The trial court made its disposition orders at this hearing subject to further review at a hearing in six months.

STATEMENT OF FACTS

In 1995, the children’s parents were divorced. The family law court granted both parents legal custody of the children (Dale and Cami), granting primary physical custody to the mother. The father was ordered to pay \$650 per month in child support.

Both Dale and Cami complained to their father that their mother, as well as their stepfather, would get angry at them and hit them with a wooden paddle. The juvenile court made an express finding that while in the care of their mother and stepfather both children were “inappropriately disciplined” and that “[s]uch actions place the children at risk of suffering serious physical harm.”

On October 10, 2000, while being interviewed by a DPSS social worker and Riverside County police officer, Cami stated that on at least 10 occasions her stepfather came into her bedroom at night and placed his hand on her vagina. Although Cami later

recanted her statements that her stepfather touched her vagina, a forensic psychologist appointed by the court examined Cami and concluded that, in fact, Cami's initial statements about being molested were "probably the closest to being the truth."

On November 6, 2000, the juvenile court authorized Dale and Cami to stay under the care of their father pending the upcoming pretrial hearing. On December 5, 2000, the juvenile court left the children under their father's care pending a forensic psychological examination and the pretrial hearing, which was continued to January 23, 2001. The children appear to have remained under their father's temporary custody and care until the hearing on jurisdiction and disposition, which took place on March 6, 2001.

Prior to the hearing on jurisdiction and disposition, DPSS submitted a written recommendation to the court that both Dale and Cami be placed in the custody of their father, relying primarily on the evaluation of the court-appointed forensic psychologist.

The forensic psychologist determined that while father "is not a perfect parent, he is an appropriate parent, who takes into consideration the needs of his children and provides for them to the best of his ability."

The forensic psychologist concluded that the children's mother was unfit to assume custody of the children, stating in part that: "A very significant issue is her lack of honesty on the MMPI-2." When discussing the mother's T score of 72 on the lie scale of the MMPI-2 test, the forensic psychologist explained that: "A T score above 65 [suggests] such extreme denial and/or defensiveness that the protocol should not be interpreted. A high score such as achieved here is associated with other important characteristics and behaviors. High scorers on this scale tend to be rigid and moralistic, and tend to over

evaluate their own worth. They utilize repression and denial excessively and have little awareness of the consequences to other people of their behavior.”

The forensic psychologist reached the identical conclusion regarding the stepfather, who achieved a T score of 87 on the lie scale. The forensic psychologist’s evaluation of the stepfather provided in pertinent part that: “A factor of high concern is the result of the MMPI-2. These results indicate that his veracity is to be questioned. While these results cannot determine whether or not a person is a child molester, these results do call into question how honest he is being in terms of self disclosure. By inference, when a person has something to hide, or that they don’t want to have known, denial is a major defense mechanism. These results show a very high level of denial of even behavior that is very normal in the general population.”

The forensic psychologist’s bottom line recommendation when evaluating which parent was best suited to take custody of the children was as follows: “It is my recommendation that her children remain in the custody of their father at the present time. It is my belief that the allegations made by her daughter [regarding sexual molestation by stepfather] are true, and that some recognition of [the mother’s] part in this entire matter is needed.”

At the hearing on jurisdiction and disposition, DPSS changed its position, recommending placement of Dale with his father and Cami with her mother. There were several apparent reasons supporting DPSS’s change in position. First, the mother testified that she didn’t believe it would be detrimental to the children if they lived apart, Dale with his father and Cami with her. Second, evidence was introduced suggesting that it was in

Cami's best interests to live separately from her brother Dale because Dale exerted excessive influence over Cami. Third, the mother testified she would comply with any conditions placed by DPSS in order to have Cami in her home. Fourth, the mother expressed her willingness to attend counseling with Cami and to assure that Cami attends counseling. Fifth, the mother testified that she would assure that her second husband, Cami's stepfather Art A., would not be left alone with Cami in the future. Sixth, Cami herself testified that she wanted to live with her mother rather than with her father, and that she felt both safe and more comfortable at her mother's house. Finally, Cami testified that she was not afraid of her stepfather and that she would feel comfortable living with him.

In light of this evidence, the court determined that it would place Dale in the custody of his father. (§§ 300, subd. (b), 361.2, subds. (a)(1) & (b)(2).) The court allowed Cami's mother to retain custody of Cami, which she had before DPSS filed the petition. The court imposed a variety of conditions on the mother. One condition was that Cami would not be left alone at any time with her stepfather.

DISCUSSION

The father disputes the order placing Cami in her mother's custody, asserting that doing so would be contrary to Cami's best interests and in violation of the two most important principles underlying our dependency laws: (1) "to promptly resolve the child's custody status"; and (2) "to provide the child with a stable environment in which to develop." (*In re Erika W.* (1994) 28 Cal.App.4th 470, 476.)

The findings and orders of the juvenile court in a dependency proceeding may not be disturbed if they are supported by substantial evidence. (*In re Tania S.* (1992) 5

Cal.App.4th 728, 733.) In reviewing the sufficiency of the evidence, our review requires that all reasonable inferences be given to support the findings and orders of the juvenile court, and the record must be viewed in the light most favorable to those orders. (*Ibid.*) ““The rule is clear that the power of the appellate courts begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the trier of fact.” (*Id.* at pp. 733-734.)

In the present case, neither natural parent disputes the order of the juvenile court placing Dale in the custody of his father. The father disputes the order placing Cami in the custody of her mother. However, it is proper to leave Cami in the custody of her mother (who had custody of Cami before the petition was filed) unless: (1) there is a substantial danger to Cami’s physical health, safety, protection, or physical or emotional well-being if returned to continue living with her mother; and (2) there are no reasonable means by which the minor’s physical health, safety and emotional well-being can be protected without removing the minor from her mother’s physical custody. (§ 361, subd. (c)(1).)

In the present case, the trial court left Cami in the physical custody of her mother, but imposed a series of conditions designed to protect Cami from the problems experienced in her mother’s household prior to initiation of the dependency proceeding. These conditions included: (1) an order directing Cami’s mother never to leave Cami alone with her stepfather; (2) an order directing Cami’s mother to cooperate and facilitate visitation between Cami, her natural father, and her brother Dale; (3) an order directing Cami’s mother to comply with her case plan (which is not in the record before us); and (4)

an order directing Cami's mother to ensure that Cami is attending her counseling sessions. Moreover, the mother's agreement to attend counseling helped assure that the mother would not again inappropriately discipline her daughter Cami. Accordingly, in the present case, the trial court placed Cami in her mother's custody as mandated by statute because the court did so while employing reasonable means to protect Cami's physical health, safety and emotional well-being. We therefore believe that if supported by substantial evidence, placing Cami in her mother's custody was proper. (§ 361, subd. (c)(1).)

Substantial evidence supports the trial court's disposition. First, evidence was introduced suggesting that it would be in Cami's best interest not to live in the same household as her brother Dale because he influenced her excessively. Second, Cami's mother expressed her willingness to attend counseling with Cami and to assure that Cami attends counseling, which would deal with the mother's inappropriately disciplining Cami. Third, Cami's mother testified that she would assure that her second husband, Cami's stepfather, would not be left alone with Cami again. This served to protect Cami from the possibility of any harm by the stepfather. Fourth, Cami's own desire to live with her mother rather than with her father supported placing Cami in the custody of her mother. Fifth, Cami testified that she would feel comfortable living in the same house as her stepfather. Sixth, since Cami had been in her mother's primary custody for almost the entire period subsequent to her parents' divorce, the goal of assuring stability and continuity supported the order placing Cami in the primary physical custody of her mother as well. (See *In re Stephanie M.* (1994) 7 Cal.4th 295, 316.) Finally, by retaining continuing jurisdiction over

the matter and setting a further hearing in six months, the juvenile court could impose an appropriate remedy if Cami's mother failed to comply with the court-imposed conditions.

Substantial evidence supports the juvenile court's disposition placing Cami in the custody of her mother. As a result, we must affirm its judgment.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED

/s/ Ramirez
P.J.

We concur:

/s/ McKinster
J.

/s/ Richli
J.